

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION 09 SEP -28
STATE OF MISSOURI

MISSOURI STATE COMMITTEE
FOR SOCIAL WORKERS,

Petitioner,

v.

MARTA MERBAUM,

Respondent.

FILED

SEP 08 2009

ADMINISTRATIVE HEARING
COMMISSION

Cause No: 09-0575 SW

JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARINGS
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
AND THE MISSOURI STATE COMMITTEE FOR SOCIAL WORKERS
AND DISCIPLINARY ORDER

Respondent Marta Merbaum, ("Merbaum"), and Petitioner The Missouri State Committee for Social Workers, ("Committee"), enter into this Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and the Missouri State Committee for Social Workers, and Disciplinary Order ("Joint Stipulation") for the purpose of resolving the Complaint filed against Respondent. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("Commission")(1 CSR 15-3.446(4)) and pursuant

to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the Committee pursuant to § 621.110, RSMo, Cum. Supp. 2008 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Merbaum acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Committee at which time Merbaum may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Committee. Being aware of these rights provided Merbaum by operation of law; Merbaum knowingly and voluntarily waives each and every one of

¹All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

these rights and freely enters into this Joint Stipulation. Merbaum further agrees to abide by the terms of this document as they pertain to her.

Merbaum acknowledges that she received a copy of the Complaint in this case, which was filed with the Commission on May 5, 2009. Merbaum stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the Committee that Merbaum's license as a clinical social worker, license no. CSW 000821, is subject to disciplinary action by the Committee in accordance with the provisions of Chapter 621, RSMo, and § 337, RSMo.

I. JOINT STIPULATION

Based upon the foregoing, the Committee and Merbaum jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT

1. The Committee is an agency of the State of Missouri created and established pursuant to § 337.622, RSMo, for the purpose of executing and enforcing the provisions of §§ 337.600 through 337.689, RSMo.

2. Respondent is licensed by the Committee as a licensed clinical social worker, license number CSW 000821.

3. Respondent's license is current and active, and was so at all times relevant herein.

4. On or about August 18, 2007, Respondent submitted an online "License Renewal" to the Committee.

5. Respondent answered in the affirmative to the following question, "I have completed the required thirty (30) clock hours of Continuing Education in the area of clinical social work during this licensure term."

6. On or about October 15, 2007, the Committee randomly audited Respondent's 2005 – 2007 continuing education courses.

7. The Committee received Respondent's response to the Committee's request for verification of completed continuing education courses and approved the following courses attended by Respondent for continuing education credit:

a. 6.25 hours on December 8, 2006, for Treating Anxiety, Panic & Worry.

8. Respondent earned 6.25-credit hours of Committee approved continued education in social work during the 2005-2007 renewal period.

9. Respondent failed to earn 30 clock hours (continuing education hours) during the 2005-2007 renewal period.

10. On or about February 1, 2008, the Committee mailed Respondent another letter requesting that she provide further evidence to support her claim of completion of 30-credit hours of Committee approved continued education in social work.

11. Respondent has not responded to the February 1, 2008, letter.

12. Respondent had a relationship of professional trust and confidence with the Committee, her colleagues and her clients, in that the Committee, Respondent's colleagues and her clients, relied on Respondent as a licensed clinical social worker to practice clinical social work in compliance with the statutes, regulations, and standard of care governing that profession.

JOINT PROPOSED CONCLUSIONS OF LAW

13. Respondent's conduct violates State Regulation 20 CSR 2263-2.082, which states in part:

- (1) As a condition for renewing a license to practice, all licensed social workers shall be required to have completed acceptable continuing professional education courses prior to the renewal of the license:

....

- (D) All other licensed social workers shall complete thirty (30) clock hours of acceptable continuing professional education courses prior to the renewal of their license;

....

- (2) As part of the thirty (30) continuing education hours required for each renewal cycle, each applicant for renewal or reinstatement of a license shall complete three (3) clock hours of ethics presented by a social worker who has graduated from an accredited school of social work or by a professional who has knowledge of ethics as it relates to the practice of clinical or baccalaureate social work.

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- (7) Continuing education hours cannot be carried over into another or the next reporting period and shall not be awarded for regular work activities, administrative staff meetings, case staffing or reporting, membership in or holding office in, or participation on boards or committees, business meetings of professional organizations, or training specifically related to policies and procedures of an agency.

....

14. State Regulations 20 CSR 2263-3.010 through 20 CSR 2263-3.140 lists the ethical standards for clinical social workers.

15. Respondent's conduct violates State Regulation 20 CSR 2263-3.010, which states in part:

- (1) The ethical standard/disciplinary rules for licensed social workers, provisional licensed clinical social workers, temporary permit holders and registrants, as set forth hereafter by the committee, are mandatory. The failure of a licensed social worker, provisional licensed social worker, temporary permit holder, or registrant to abide by any ethical standard/disciplinary rule in this chapter shall constitute unethical conduct and be grounds for disciplinary proceedings.

....

16. Respondent's conduct violates State Regulation 20 CSR 2263-3.140, which states in part:

- (12) A licensed social worker shall take all necessary and reasonable steps to maintain continuing competence in

the practice of clinical social work or baccalaureate social work by completing at least thirty (30) clock hours of continuing education on or before the expiration of the license for each renewal period.

....

17. Therefore, cause exists to discipline Respondent's license pursuant to § 337.630.2, RSMo, Cum. Supp. 2008, which states in part:

2. The committee may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by §§ 337.600 to 337.639, or any person who failed to renew or has surrendered the person's license for any one or any combination of the following causes:

....

(6) Violation of, or assisting or enabling any person to violate, any provision of sections 337.600 to 337.689, or any lawful rule or regulation adopted pursuant to sections 337.600 to 337.689;

....

(11) Obtaining a license based upon a material mistake of fact;

....

(13) Violation of any professional trust or confidence;

....

II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of Merbaum's license as a clinical social worker, subject to the following terms and conditions, and entered by the Committee in this matter under the authority of §§ 536.060 and 621.110, RSMo Cum. Supp. 2008. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Merbaum's license is on probation.** Merbaum's license as a clinical social worker is hereby placed on PROBATION for a period of one (1) year. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Merbaum shall be entitled to practice as a clinical social worker under Chapter 337, RSMo, as amended, provided Merbaum adheres to all the terms of this agreement.
2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:
 - a. Merbaum must complete 23.75 hours of continuing education within one (1) year of entering into this Joint Stipulation. Three (3) hours of the 23.75 hours must qualify as ethic hours. These hours shall be in addition to and not count toward the 30 hours of continuing education required to be completed during the 2007-2009 license period in order to renew in 2009. All proof of successful completion of continuing education must be submitted to the Committee.

b. Stried must complete three (3) hours of ethics education in addition to the three (3) hours required in paragraph 3a. These hours may count towards the 30 hours of continuing education required to be completed during the 2007-2009 license period in order to renew in 2009.

c. Should Merbaum fail to complete the continuing education hours within one (1) year of entering into this Joint Stipulation, the Committee will file a complaint against Merbaum.

3. Upon the expiration of the disciplinary period, the license of Merbaum shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the Committee determines that Merbaum has violated any term or condition of this Joint Stipulation, the Committee may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate under § 324.042, RSMo.

4. No additional discipline shall be imposed by the Committee pursuant to the preceding paragraph of this Joint Stipulation without notice and opportunity for hearing before the Committee as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Joint Stipulation does not bind the Committee or restrict the remedies available to it concerning any future violations by Merbaum of § 337, RSMo, as

amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

6. This Joint Stipulation does not bind the Committee or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the Committee or may be discovered.

7. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the parties agree that the Committee may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Merbaum agrees and stipulates that the Committee has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

8. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. The parties to this Joint Stipulation understand that the Committee will maintain this Joint Stipulation as an open record of the Committee as required by Chapters 337, 610, and 324, RSMo, as amended.

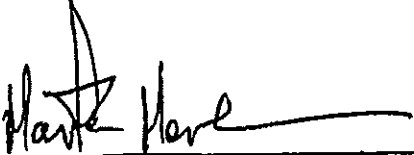
11. Merbaum, together with her heirs, assigns, agents, partners, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Committee, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before

the Commission based upon the complaint filed by the Committee in the above-captioned cause.

RESPONDENT

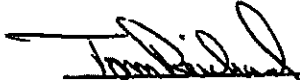


Marta Merbaum Date

8/25/09

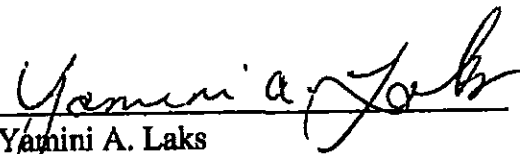
PETITIONER

STATE COMMITTEE FOR SOCIAL
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